

ONE HUNDRED SIXTEENTH CONGRESS

# Congress of the United States

## House of Representatives

## COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115Majority (202) 225-2927  
Minority (202) 225-3641

January 24, 2018

The Honorable Ajit V. Pai  
Chairman  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Dear Chairman Pai:

Pursuant to Rules X and XI of the U.S. House of Representatives, we write to request information about what communications, if any, took place between the Federal Communications Commission (FCC) and FCC licensees, relating to the legal challenge and potential legal challenges of the FCC's *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment* Declaratory Ruling and Third Report and Order (Order).<sup>1</sup>

It has come to our attention that certain individuals at the FCC may have urged companies to challenge the Order the Commission adopted in order to game the judicial lottery procedure and intimated the agency would look unfavorably towards entities that were not helpful. If true, it would be inappropriate for the FCC to leverage its power as a regulator to influence regulated companies to further its agenda in seeking a more friendly court. To date, four FCC licensees have petitioned the federal judiciary for review of the Order in separate filings and in separate circuits.<sup>2</sup> These cases—along with challenges filed in the Ninth Circuit by

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<sup>1</sup> Federal Communications Commission, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket 17-79 and WC Docket 17-84, Declaratory Ruling and Third Report and Order (Sept. 27, 2018).

<sup>2</sup> *AT&T Services, Inc. v. Federal Communications Commission and the United States of America*, AT&T's Petition for Review, U.S. Ct. of Appeals for the D.C. Circuit, No. 18-1294 (filed Oct. 25, 2018); *Verizon v. Federal Communications Commission and the United States of America*, Verizon's Petition for Review, U.S. Ct. of Appeals for the Second Circuit, No. 18-3255 (filed Oct. 25, 2018); *Sprint v. Federal Communications Commission and the United States of*

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cities and municipalities—were initially transferred to the Tenth Circuit Court of Appeals, after a lottery conducted under the Multidistrict Litigation rules.<sup>3</sup> On motion from the cities and municipalities, the cases have been transferred back to the Ninth Circuit.<sup>4</sup>

To help further in our inquiry, we request that you provide answers to the following questions and provide the requested documents within three weeks of the FCC receiving normal operational funding:

1. Did the FCC have communications with an FCC licensee relating to the legal challenges or potential legal challenges of the Order?
2. If so, identify every person(s) and/or FCC employee(s) involved in the communication(s), describe in detail the communication(s), and provide all documents in your possession, custody, or control relating to such communication(s).
3. Did any person at the FCC and/or FCC employee urge an FCC licensee to challenge the Order?
4. To the extent that an FCC licensee refused to challenge the Order, has any person at the FCC and/or FCC employee threatened or taken adverse action against such FCC licensee, including but not limited to delaying consideration of items or issue of interest to such person?

In addition to following the instructions provided in the attached document, in responding to this and all requests from the Committee, do not limit your search to documents and communications maintained in the accounts and files of individual FCC personnel. Your search should include all documents and communications maintained or stored anywhere in the FCC's information systems. As part of your response please include a description of the method and process you followed to conduct the search including the terms, date ranges, and other parameters you used to collect responsive information and a list of all the FCC information systems you searched.

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*America, Sprint's Petition for Review, U.S. Ct. of Appeals for the Tenth Circuit, 18-9563 (filed Oct. 25, 2018); Puerto Rico Telephone Company v. Federal Communications Commission and the United States of America, Puerto Rico Telephone Company's Petition for Review, U.S. Ct. of Appeals for the First Circuit, No. 18-2063 (filed Oct. 25, 2018).*

<sup>3</sup> In re Federal Communications Commission, In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order, FCC 18-133, Released Sept. 27, 2018, United States Judicial Panel on Multidistrict Litigation, Consolidation Order, MCP No. 155 (Nov. 13, 2018).

<sup>4</sup> *Challenge to FCC's 5G Network Order Moves to Ninth Circuit (2)*, BNA (Jan. 11, 2019) ([www.bna.com/challenge-fccs-5g-n57982095306/](http://www.bna.com/challenge-fccs-5g-n57982095306/)).

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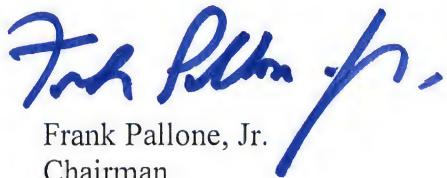
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In addition to FCC information systems, your search should include any other information systems or applications that may contain information related to this request, including personal phone records, non-government e-mail accounts, SMS-based text messages, direct communications sent or received through social media applications, or other electronic communications services. As part of your response, please provide a list of the person(s)—including FCC employee(s)—whose non-FCC accounts were searched.

An attachment to this letter provides additional specific instructions and definitions for responding to the Committee's requests. Thank you for your attention to this important matter. If you have any questions, please contact Gerald Leverich of the Committee Staff at (202) 225-3641.

Sincerely,



Frank Pallone, Jr.  
Chairman



Mike Doyle  
Chairman  
Subcommittee on Communications  
and Technology